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petitioner has not done so already, he may need to file (or refile) his Section 440.10 motion in state court.

Finally, petitioner's request for appointment of *pro bono* counsel (see Dkt. No. 31) is denied. As a general matter, there is no constitutional right to counsel in *habeas corpus* proceedings. The Criminal Justice Act ("CJA") provides that a court may appoint counsel to an indigent person when "the interests of justice so requires." 18 U.S.C. § 3006A(a)(2)(B). In deciding whether to exercise its discretion to appoint counsel under the CJA, courts in this Circuit consider the same factors as those applicable to requests for *pro bono* counsel made by civil litigants. *See e.g.*, *Zimmerman v. Burge*, 492 F. Supp. 2d 170, 176 n.1 (E.D.N.Y. 2007) (citing *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989)); *In re Pizzuti*, 10 Civ. 199, 2010 WL 4968244, at \*1 (S.D.N.Y. Dec. 7, 2010). Those factors include the likelihood of success on the merits, the complexity of the legal issues, and petitioner's ability to investigate and present the case. *See Cooper*, 877 F.2d at 172; *Hodge v. Police Officers*, 802 F.2d 58, 61-62 (2d Cir. 1986). The Court has considered these factors and finds that appointment of counsel is not warranted at this time because there is not a sufficient basis to determine that the petition has merit. Notably, petitioner's motion for a stay of the proceedings while he exhausts certain state remedies is

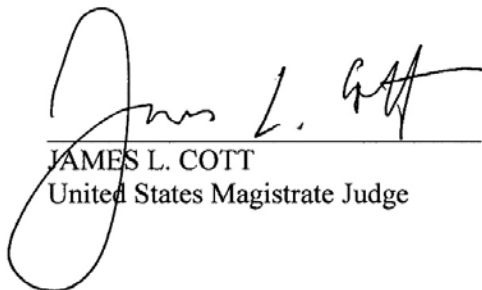
currently pending before the Court, and the outcome of that motion may alter the proceedings going forward.

**SO ORDERED.**

Dated: April 27, 2021  
New York, New York

**A copy of this Order has been  
mailed to:**

Mr. Donnelle Murphy  
Inmate No. 15-A-2721  
Collins Correctional Facility  
P.O. Box 340  
Collins, New York 14034-0340



JAMES L. COTT  
United States Magistrate Judge